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TENTH ANNUAL MEETING
OF THE
AMERICAN SOCIETY OF INTERNATIONAL LAW
SHOREHAM HOTEL, WASHINGTON, D. C.,
APRIL 27-29, 1916
FIRST SESSION

Thursday, April 27, 1916, 8 o'clock p.m.

The tenth annual meeting of the American Society of International Law was called to order by the President of the Society, the Honorable Elihu Root.

The PRESIDENT. The Society will come to order, and thereby differentiate itself from all others in the field of international law.

It may strike some persons as singular that we are having an annual meeting when it is only four months since the last annual meeting. That is due to the great rapidity with which international events travel in these recent days, and the sharp curves they take, so that if you wish to locate the line you have to make many points.

THE DECLARATION OF THE RIGHTS AND DUTIES OF
NATIONS ADOPTED BY THE AMERICAN INSTITUTE
OF INTERNATIONAL LAW.

OPENING ADDRESS OF ELIHU ROOT,
President of the Society

With this meeting we finish the first decade of this Society. How great is the change of conditions in the field of international law during that period. Ten years ago all the governments of the world professed unqualified respect and obedience to the law of nations, and a very small number of persons not directly connected with government knew or cared anything about it. In this country at least international law was regarded as a rather antiquated branch

of useless learning, diplomacy as a foolish mystery, and the foreign service as a superfluous expense. Now that governments have violated and flouted the law in many ways and with appalling consequences, the people of this country at least have begun to realize that observance of the law has a real and practical relation to the peace and honor of their own country and their own prosperity. They are beginning to take an interest in the subject, to discuss it in the newspapers, to inquire how observance of the law may be enforced. There appears a dawning consciousness that a democracy which undertakes to control its own foreign relations ought to know something about the subject. If we had not established this Society ten years ago to study and discuss and spread a knowledge of international law it would surely be demanded now, and we may be certain that our annual public discussions and the publication of the admirable *Journal* which we have always maintained, with its definite and certain information upon international events, its interesting and well informed discussion of international topics, and its supplements, with their wealth of authentic copies of international documents, have contributed materially towards fitting the people of our country to deal with the international situations which are before them.

Following our example, all the American countries have established similar societies, so that there are now twenty-one such societies on the American continents. In most cases these societies have been organized with the direct approval and sympathy of the government of the country and they include in their numbers a large part of the most eminent leaders of opinion in all the American states. Still another institution has been created in the American Institute of International Law, composed of delegates selected, to a limited number, by each of these national societies. This institution has been established not as a competitor of the *Institut de Droit International*, which selects its members from among all the civilized countries, and not with the idea that there is such a thing as American international law to be distinguished from general international law, but with the idea that there may be special American views upon international questions; that the circumstances of the American republics may make it desirable for them to insist upon and press forward the development of particular principles in the law; that there are varieties of opinion upon such subjects which it may be useful to subject to common discussion and comparison of views; that the promotion of the habit

of thinking broadly and internationally and not narrowly or locally, and a knowledge in each country of the points of view and habits of thought of each other country, will make all the American states more useful members of the family of nations, more considerate, more tolerant of differences of opinion, and more conscious of the international duties which are correlative to international rights.

The American Institute of International Law held its first meeting in Washington in December last, and, after a discussion in which representatives from all parts of the new world engaged, it adopted as its point of departure for future discussions a declaration of the rights and duties of nations which I commend especially to your attention. The declaration was in these words:

DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS

I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.

II. Every nation has the right to independence in the sense that, it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

You will observe that this declaration states in the main familiar principles. We have long been accustomed to such statements in the text books. Indeed the official reporter of the Institute, in his commentary upon the declaration, undertakes to show and does show that every statement, far from being novel, is based upon the decisions of American courts and the authority of American publicists. Yet the declaration was not superfluous or unimportant. There is a vast difference between the occasional decisions of a national court or the opinions of individual students, and a unanimous agreement of representatives of all the sovereign states of the Western Hemisphere upon a statement in definite terms of fundamental principles of international right. A still more important reason for such a declaration lies in the fact that the fundamental principles declared, now stand denied or repudiated by the conduct of nations in the great war that rages in the old world.

This instrument asserts the right of every nation to continued existence, to independence, to exclusive jurisdiction over its own territory, and to equality with every other nation; and it denies the right of any nation to commit for its own protection or preservation, unlawful acts towards innocent and unoffending states. These are the fundamentals of international right. They involve the existence of a democratic community of nations in which each individual nation has the same rights and full liberty for their enjoyment, limited and limited only, by the equal rights of every other member of the community. The body of rules of action which long experience and general consent have worked out for the assertion and preservation of these rights and the application of the universal limitation upon them in the practical relations between nations constitutes international law. This scheme of organization of the civilized inhabitants of the earth is sharply distinguished from conditions of tribal hostility which prevailed during all the early part of human history and in which each separate tribe maintained its independence and liberty as best it could by force of arms in a normal relation of hostility to all other tribes, and it is equally distinguished from the condition of subordination and suzerainty in which a single nation, acquiring a preponderance of power, reduces other nations to submission and imposes upon them friendly relations with each other as equal vassals of the superior state. A familiar example of the one extreme is to be found in Europe during the Middle Ages and of the other in the

Roman Empire, and upon a smaller scale and for a brief period in the control of Napoleon over a large part of continental Europe. One condition affords independence to strong, civil societies at the expense of progress in civilization. The other condition fosters the arts of peace at the cost of liberty. The democratic organization of a community of nations, on a basis of acknowledged right, declared and protected by law, seeks to avoid both of these extremes, and the vast progress of civilization since the Peace of Westphalia, with the general advance of mankind in comfort, intelligence, individual freedom and opportunity, testify to the superior merit of the arrangement. Yet just as ordinary democracies composed of natural persons tend, unless continually restrained, to lapse into anarchy on the one hand or to seek security under autocracy on the other, this community of nations has hitherto been in a condition of unstable equilibrium, always in danger of being overturned in one direction or the other. The age-long struggle to maintain the balance of power in Europe, often misguided, as we can see in looking back, often controlled by selfish purposes, often violating the very rights it professed to preserve, has nevertheless been a constant effort to counteract these tendencies.

A careful examination of the undisputed facts which show the origin and conduct of the present war leaves no room for doubt that the entire basis of the community organization of nations upon which rests the structure of international law is put at issue in the struggle. The principles of action upon which the war was begun involve a repudiation of every element of fundamental right upon which the law of nations rests. The right of every nation to continued existence, to independence, to exclusive jurisdiction over its own territory, and equality with other nations, is denied. The right of any strong nation to destroy all those alleged rights of other nations in pursuit of what it deems to be useful for its own protection or preservation is asserted. Under this view what we have been accustomed to call fundamental rights would become mere privilege to be enjoyed upon sufferance according to the views of expedience held by the most powerful. If this view prevails the whole structure of modern international law will be without foundation; and the discussion of its rules with the nations who maintain this view must now be not a real appeal to any law, but merely a balancing of possible injuries and benefits. So long as these fundamental questions are unsettled all discussion of international law must be hypothetical, as if architects were to discuss the

elevation of a building while the ground plan remains undetermined. These propositions are the postulates of all reasoning regarding the rules of international law. All discussion of international right is based upon them, assumes assent to them. To discuss international law with a nation which denies these postulates can be nothing but an unreal and futile appearance of discussing the law. When your major premise is disputed you must establish that before you can go on with your argument. There is only one real question of international law today, and that is, whether these postulates of the law are to stand or not. As between nations which agree that they should stand there may be discussion as to international rules based upon that hypothesis, but as between nations which assert and nations which repudiate these fundamentals of the law there can be no real discussion except of expediency. The declaration of the American Institute of International Law arrays the members of all these American countries upon one side of this vital question of principle which is being fought out in the great war. Their act is altogether impersonal. It takes no account of responsibility or blame or racial feelings or friendships or enmities, and it is unmistakable. The representatives of all the American countries affirm the old basis of international right upon which depends the life, the independence and the legal equality of all small nations and the laws which protect them against the arbitrary power of the strong.

It will be useful to remember, however, that to be effective such declarations must be accompanied by conformity in the conduct of the nations adhering to the principles declared. There are some rules of national conduct which flow directly from the principles of national independence and equality but which do not always coincide with the impulses of sentiment or with the apparent requirements of immediate interest. On the one hand these principles require that nations shall refrain from interference with the internal affairs of other nations. It frequently happens that many persons, in the United States for example, strongly disapprove things that are done in other countries within the jurisdiction and affecting the citizens of those other countries and not affecting any country's international rights. Such acts may run counter to our ideas of liberty, of morality, of humanity, of fair business conduct. The strongest sentiments and interests may urge interference to prevent conduct which shocks or offends us, yet, failing some special and exceptional ground—some recognized inter-

national ground for intervention—we have no right to interfere, because interference would be an infringement upon the independent equality of the other state. The peace and order of the world require that each nation shall mind its own business and refrain from attempting to impose its ideas of conduct upon other equally independent states. This is not because the interference in the particular case might not be beneficial so far as that case goes; but because the right to interfere in one case carries with it the right to interfere in other cases; the determination of the question when interference is justifiable would necessarily rest with the interfering Power; and in the exercise of such a right all weaker states would become subject to the control of the stronger and ultimately to the control of the strongest. With the great varieties of race and custom and conceptions of social morality in the human family the right of each nation to conduct its own internal affairs according to its own ideas is of the essence of liberty. The rule which prohibits interference by other nations, with however good a purpose, is a rule against inevitable tyranny. It is not at all uncommon that the best impulses and sentiments of our own people in this country are enlisted in favor of action by our government which would do infinitely more harm than good, by breaking down the barrier which the principle of the independent equality of states presents against the evils of foreign domination.

On the other hand the assertion of the independent equality of states implies an interest on the part of all states adhering to the doctrine in having it preserved, and it follows necessarily that when one sovereign state is dealing not with its internal affairs but with its international relations and violates the rule of right as against another equal and independent state, all other equally independent states have a right to insist that the international rule shall be observed, and such insistence is not interfering with the quarrels of others but is an assertion of their own rights. In each case every state must be guided by its own circumstances and interests in determining how far it will go in supporting its interference. There can, however, be no doubt of the international right to interfere in behalf of the maintenance of the law. So far as it is possible to see now, if the issue of the present conflict leaves the fundamental basis of international law still existent, the possibility of securing conformity to the rules of law resting upon that basis will depend upon the recognition by the nations in general of the duty to interfere and insist upon the observance of the law

and upon the adoption by them of a practice in conformity with that duty. The exercise of such an international right was well illustrated when, in November, 1861, the commander of the United States man-of-war, the *San Jacinto*, took the Confederate commissioners, Messrs. Mason and Slidell, from the neutral British passenger vessel, the *Trent*. Upon England's demanding the surrender to her of Mason and Slidell the Prussian Minister for Foreign Affairs, Count Bernstorff, the father of the present German Ambassador to the United States, wrote to the Prussian Minister at Washington for communication to the American State Department a letter, dated at Berlin, December 25, 1861. He said:

The maritime operations undertaken by President Lincoln against the Southern seceding States could not, from their very commencement, but fill the King's Government with apprehensions lest they should result in possible prejudice to the legitimate interests of neutral Powers.

These apprehensions have unfortunately proved fully justified by the forcible seizure on board the neutral mailpacket the *Trent*, and the abduction therefrom, of Messrs. Mason and Slidell by the commander of the United States' man-of-war the *San Jacinto*.

This occurrence, as you can well imagine, has produced in England and throughout Europe the most profound sensation, and thrown not Cabinets only, but also public opinion, into a state of the most excited expectation. For, although at present it is England only which is immediately concerned in the matter, yet on the other hand, it is one of the most important and universally recognized rights of the neutral flag which has been called into question.

* * * In the absence of any reliable information we were in doubt as to whether the captain of the *San Jacinto*, in the course taken by him, had been acting under orders from his government or not. Even now we prefer to assume that the latter was the case. Should the former supposition, however, turn out to be the correct one, we should consider ourselves under the necessity of attributing greater importance to the occurrence, and to our great regret we should find ourselves constrained to see in it not an isolated fact but a public menace offered to the existing rights of all neutrals.

The French Foreign Office wrote, on the third of December, 1861, to the French Minister in Washington:

The wish to contribute to prevent a conflict, imminent perhaps between two Powers towards which it is animated by sentiments equally friendly, and the duty to maintain certain principles essential to the security of neutrals with the effect of protecting the rights of its own flag from injury, have convinced it (the Government of the Emperor) after mature reflection, that it can not under these circumstances remain altogether silent.

M. Thouvenel then discusses the merits of the *Trent* affair, and proceeds :

Not wishing to enter into a more thorough discussion of the question raised by the capture of MM. Mason and Slidell, I have said enough about it, I believe, to establish that the Cabinet at Washington would not be able, without infringing upon the principles for which all neutral Powers are equally interested in assuring respect or without contradicting its own conduct up to this time, to give its approval to the proceedings of the commander of the *San Jacinto*.

The Austrian Government instructed its minister in Washington in the same sense.

Here was a case in which these great Powers asserted unhesitatingly their interest in maintaining the common right of nations to have the rules of international law maintained. The case happened to be free from those obstacles to frank expression which have been so frequently presented by the delicate adjustments necessary to preserve the balance of power in Europe, and accordingly the Powers expressed themselves freely. It never occurred to anybody to deny that they were within their rights. We can hardly doubt that their expressions had a material effect in leading to the action of the American Government in preventing war between Great Britain and the United States and in making effective a rule of law which protects the rights of all neutrals.

Any nation which adheres to the American Institute's Declaration of the Rights and Duties of Nations rests under a duty, whenever the law which declares and protects those rights is clearly violated or threatened, to follow some such course as these continental nations followed in the *Trent* case. This is not a duty created by law or by treaty. There is no legal obligation, but there is a moral obligation, supported by enlightened self-interest, such as urges every member of a civil community who is worthy of respect to give his voice, his in-

fluence, his example, towards the preservation of the law through which alone the community can continue to exist. If the nations really wish to have peace and order maintained by law they must take an interest in having the law observed. They must really mean it, and act accordingly.

Furthermore the declaration of the Institute asserts the subordination of nations to the obligations of morality. It denies that any aggregation of human beings in any state, under any form of government, can be superior to the duties of good faith, of justice, and of humanity. I shall not discuss that. No democracy, no republic, no form of government based upon the rights of men, can continue to live in a world which rejects that view. This republic can not continue to live in a world which rejects that view.

It is to be observed that this declaration, in which representatives of all the American countries unite, asserts for all the world as a matter of general public right the same principles which, somewhat more narrowly and upon a different ground, the famous declaration of President Monroe asserted in respect of the American Republics. The message of Monroe affirmed in effect that all the American states were to be regarded as members of the community of nations; that they were entitled to live, to be independent, to be treated as equals, and to be free from oppression by other Powers. He gave notice that the attempt by any European Power to override these rights of the American states would be regarded as unfriendly to the United States because it would be dangerous to the peace and safety of the United States. As we turn from the narrow limits of the Monroe Doctrine to the broader field of universal international right set forth in the declaration of the Institute, with the terrible lesson of the great war in our minds, we may well assert that the repudiation of these principles, the violation of these rules anywhere within the confines of civilization, is dangerous to the peace and safety of the whole community of nations. To the efforts of the community of nations towards defending its peace and safety against the destruction of the fundamental bases of its public right, the often quoted words of Mr. Calhoun regarding the Monroe Doctrine are applicable. He said, in the Senate, in 1848:

Whether you will resist or not, and the measure of your resistance—whether it shall be by negotiation, remonstrance, or some intermediate measure, or by a resort to arms; all this must

be determined and decided on the merits of the question itself. This is the only wise course. * * * There are cases of interposition where I would resort to the hazard of war with all its calamities.

Whether the United States will soon have occasion or will long have the ability or the will to maintain the Monroe Doctrine lies in the uncertain future. Whether it will be necessary for her to act in defense of the doctrine or abandon it may well be determined by the issue of the present war. Whether when the occasion comes she will prove to have the ability and the will, to maintain the doctrine depends upon the spirit of her people, their capacity for patriotic sacrifice, the foresight and character of those to whose initiative in foreign affairs the interests of the people are entrusted.

Whether the broader doctrine affirmed by the American Institute of International Law is to be made effective for the protection of justice and liberty throughout the world depends upon whether the vision of the nations shall have been so clarified by the terrible lessons of these years that they can rise above small struggles for advantage in international affairs, and realize that correlative to each nation's individual right is that nation's duty to insist upon the observance of the principles of public right throughout the community of nations.

The PRESIDENT. I have very great pleasure in introducing to you for the second number on this program Honorable David Jayne Hill, formerly American Ambassador to Germany, who will address the Society upon the possible means of increasing the effectiveness of international law.

THE POSSIBLE MEANS OF INCREASING THE EFFECTIVENESS OF INTERNATIONAL LAW

ADDRESS OF DAVID JAYNE HILL,

Formerly American Ambassador to Germany

Mr. President, Members of the Society, Ladies and Gentlemen: I am greatly indebted to the President for defining the nature and significance of international law, and citing in illustration of it the declaration of principles of the American Institute. Within the brief twenty minutes assigned to me to aid in the solution of an extremely difficult subject it would be quite impossible to undertake to describe